

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Aug 11, 2023

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CLAY V. HAYNES,

Plaintiff,

v.

MELISSA ANDREWJESKI,

Defendant.

NO. 4:23-CV-5028-TOR

ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS

BEFORE THE COURT are Defendant's Motion to Dismiss (ECF No. 16),
Petitioner's construed Motion for Summary Judgment (ECF No. 19), and
Petitioner's 2nd Amended Motion "Whistle Blower Protection" (ECF No. 20).
These matters were submitted for consideration without oral argument. The Court
has reviewed the record and files herein and is fully informed. For the reasons
discussed below, Defendant's Motion to Dismiss (ECF No. 16) is **GRANTED**,
Petitioner's construed Motion for Summary Judgment (ECF No. 19) is **DENIED**

1 **as moot**, and Petitioner’s 2nd Amended Motion “Whistle Blower Protection” (ECF
2 No. 20) is **DENIED as moot**.

3 **BACKGROUND**

4 Petitioner, proceeding *pro se*, is serving a 23-year sentence at the Coyote
5 Ridge Corrections Center. ECF No. 1. He brings this Petition to challenge his
6 Benton County jury conviction for rape of a child second degree, rape of a child
7 third degree, and incest first degree. *Id.* Petitioner filed an appeal with the
8 Washington Court of Appeals, Division III, on or about January 28, 2022. ECF
9 No. 16-1 at 23. Plaintiff has not filed a brief in the matter and the Court of
10 Appeals has not yet ruled on the appeal. *See id.* at 51–52. Petitioner filed a
11 Petition for Habeas Corpus relief with this Court on March 3, 2023. ECF No. 1.
12 Defendant filed the present motion on June 21, 2023, seeking dismissal of the
13 Petition on the grounds that Petitioner has not exhausted his state court remedies.
14 ECF No. 16.

15 **DISCUSSION**

16 Before a federal court may grant habeas relief to a state prisoner, the
17 prisoner must exhaust the state court remedies available to him. 28 U.S.C. §
18 2254(b); *Baldwin v. Reese*, 541 U.S. 27 (2004); *Castille v. Peoples*, 489 U.S. 346
19 (1989). Exhaustion generally requires that a prisoner give the state's highest court
20 an opportunity to act on his claims before he presents those claims to a federal

1 court. *O'Sullivan v. Boerckel*, 526 U.S. 838 (1999). A petitioner has not exhausted
2 a claim for relief so long as the petitioner has a right under state law to raise the
3 claim by available procedure. *See id.*; 28 U.S.C. § 2254(c).

4 Having liberally construed each of Petitioner's submissions, the Court finds
5 Petitioner has not exhausted his state court remedies. Petitioner filed an appeal on
6 or about January 28, 2022 in the Washington Court of Appeals, Division III;
7 however, Petitioner has not yet filed a brief in the matter. ECF No. 16-1 at 23, at
8 51–52. Therefore, the Court of Appeals has yet to rule on the appeal and the
9 Supreme Court of Washington has yet to be presented with any issues on direct
10 appeal.

11 Generally, federal courts will not intervene in a pending state court criminal
12 proceeding absent extraordinary circumstances. *Younger v. Harris*, 401 U.S. 37,
13 53–54 (1971). “A district court should abstain under *Younger* when: (1) there are
14 ongoing state judicial proceedings; (2) the proceedings implicate important state
15 interests; and (3) the state proceedings provide the plaintiff with an adequate
16 opportunity to raise federal claims.” *Meredith v. Oregon*, 321 F.3d 807, 816 (9th
17 Cir. 2003). All three *Younger* prongs favor abstention in this case. There is an
18 ongoing state criminal appellate proceeding; Petitioner has been convicted of child
19 rape and incest, import matters of state interest; and any constitutional issues may
20 be adequately litigated in the state appellate system. Additionally, Petitioner may

1 challenge the fairness of his criminal trial through subsequent state and federal
2 habeas corpus proceedings, if necessary.

3 Petitioner argues *Younger* does not apply to his petition because he asserts a
4 claim for double jeopardy violation. ECF No. 18 at 9. The claim appears
5 grounded in his argument that he should not have been retried following a
6 purported mistrial on the same charges for which he has now been convicted. ECF
7 No. 1 at 7–8, at 15–16. However, because the retrial has already occurred,
8 Petitioner’s double jeopardy claim “no longer fits into the exception provided to
9 protect against the unique harm of suffering through a second trial.” *Hill v.*
10 *Plummer*, 27 Fed. Appx. 723, 724 (9th Cir. 2001) (citing *Hartley v. Neely*, 701
11 F.2d 780, 781 (9th Cir. 1983) (per curium) (“Indeed, we are convinced that a
12 petitioner in state custody can only be assured freedom from double jeopardy by
13 giving him access to habeas review *prior to a second trial*.” (emphasis added));
14 *Mannes v. Gillespie*, 967 F.2d 1310, 1312 (9th Cir. 1992) (“Because full
15 vindication of the right necessarily requires intervention before trial, federal courts
16 will entertain *pretrial* habeas petitions that raise a colorable claim of double
17 jeopardy.” (emphasis added)). Accordingly, Petitioner’s claim for double jeopardy
18 violation does not fall within the exception to the *Younger* doctrine.

19 Because Petitioner has not exhausted his state remedies and there are no
20 exceptional circumstances warranting this Court’s intervention in the pending state

proceedings, Petitioner's habeas corpus petition is premature and must be dismissed.

ACCORDINGLY, IT IS HEREBY ORDERED:

1. Defendant's Motion to Dismiss (ECF No. 16) is **GRANTED**. The Petition for Habeas Corpus is **DISMISSED without prejudice**.
2. Petitioner's construed Motion for Summary Judgment (ECF No. 19) is **DENIED as moot**.
3. Plaintiff's 2nd Amended Motion "Whistle Blower Protection" (ECF No. 20) is **DENIED as moot**.

The District Court Executive is directed to enter this Order and Judgment accordingly, furnish copies to the parties, and **CLOSE** the file.

DATED August 11, 2023.



Thomas O. Rice
THOMAS O. RICE
United States District Judge